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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,947	03/12/2004	Gary Dean LaVon	9577	8015
27752 7590 04/11/2007 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL BUSINESS CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/11/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/799,947

Applicant(s)

LAVON ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-15 and 20 is/are allowed.
- 6) ☒ Claim(s) 16-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/26/06, 12/26/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed January 12, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding Tanji's core vs. claimed assembly: Applicant argues that in order to be equivalent to the claimed absorbent assembly, the core taught by Tanji would have to include equivalents of the claimed side flaps. Applicant is referred to both the rejection of claim 16 in the previous action where it clearly states that the semicircular edge zones 123 define breathable side flaps, and subsequently to Fig. 5, where it can clearly be seen that these flaps/zones 123 are attached to the core taught by Tanji, thus the core includes the breathable side flaps 123.

With respect to applicant's arguments regarding Tanji's side flaps/zones 123 vs. claimed breathable flaps: Examiner has restated the rejections to refer to "topsheet 105" and "backsheet 104" respectively. This does not affect the ground of rejection, which already states that the backsheet is liquid-impermeable. Further, Examiner believes it was clear which element was being referred to, and that basing an argument on the unintended misstatement of drawing figure item numbers constitutes a spurious argument.

Applicant further argues that the Office is stating effectively that the chassis 102 is simultaneously equivalent to the claimed chassis 100 and the claimed absorbent assembly 200, however nowhere in the Office action is this argument supported. Fig. 5 of Tanji clearly shows that the layer that also forms side flaps 123 is attached to the absorbent core, therefore it is included in the absorbent core. The chassis 102 is only mentioned inasmuch as it has a front region 106, rear waist region 107 and a crotch region 108 that render the claimed front, rear and

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crotch regions unpatentable. Applicant has clearly mischaracterized or manipulated the statements in the rejection of claim 16 to support this spurious argument.

With respect to applicant's arguments regarding the leg hole elastic members of Tanji versus claimed elastic gathering members: Applicant argues that leg elastic member 267 is not rendered unpatentable by leg elastic member 121. Applicant is referred to applicant's own Figs. 4 and 5 and the following from applicant's own specification: "For example, in the exemplary absorbent assembly 200 shown in Figure 1, elastic strands 267a and 267b are attached adjacent to the respective proximal edge 255a and 255b of the side flaps." 9Specification, Page 9, lines 8-10) Not only are elastic strands 267a and 267b not present in claimed Figure 1 at all, they are present in Figs. 5 and 6 where it is abundantly clear that what applicant calls a proximal edge is identical to what Tanji calls a distal edge. Thus the elastic members 121 at the distal edge of Tanji render the claimed elastic leg members unpatentable.

Applicant further argues that the second leg-hole elastic members 122 of Tanji do not lift the proximal edges off of the interior surface of the absorbent assembly. The rejection of claim 16 has been restated also to eliminate any reference to elastic members 122 in favor of only referring to elastics 121, as such references appear to be causing unnecessary and undue confusion to the applicant. Examiner will respond to this argument insofar as to request, again, that applicant reread the rejection of claim 16 (for this and many other reasons stated *supra*) and the Tanji reference.

With respect to applicant's arguments regarding the tape fasteners of Tanji: Applicant argues that the tape fasteners of Tanji are not necessarily openable and refastenable. First, applicant is reminded of the claim language of claim 16, which sets forth a fastener that is adapted to be openable and refastenable. Second, a tape fastener is clearly openable, whether it causes damage to the chassis upon opening or not. Third, it is widely understood that a

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manufacturer would not install a tape fastener that rips the chassis upon opening in all conditions. Ripping occurs when the peeling force required to open the fastener is greater than the tensile force of the chassis it is attached to. If the chassis rips, it is because a force was applied that was unintentionally greater than the required force. This obviously does not happen with every tape fastener all of the time on every diaper, therefore a tape fastener is considered and understood herein and in the art to be adapted to be openable and refastenable.

### ***Information Disclosure Statement***

The information disclosure statements (IDS) submitted on October 26, 2006 and December 26, 2006 was filed after the mailing date of the Application on March 12, 2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanji et al (U.S. Patent No. 6,461,342).

With respect to **Claim 16**: Tanji teaches a diaper 101 comprising a chassis 102 having a front waist region 106, a rear waist region 107, and a crotch region 108 extending between the two waist regions 106,107. The diaper has liquid absorbent core assembly 110 having an interior surface and an exterior surface. Semicircular side edge zones 123 define laterally opposed longitudinally extending breathable side flaps, each flap having longitudinally opposing ends and

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a longitudinally extending proximal edge. Side flaps 123 are attached adjacent to their ends to the interior surface of the absorbent assembly 110. Longitudinally extending leg hole elastic members 121 are attached to side flaps 123 adjacent their distal edges (which is equivalent to applicant's proximal edge) such that the elastic members contract upon relaxation and lift the side flaps 123 away from said interior surface of the absorbent assembly 110 to form a breathable side barrier (Fig. 4). Chassis 102 is attached to the exterior surface of core assembly 110 and has an interior surface and an exterior surface. Chassis 102 is comprised of liquid-impermeable backsheet 104 and has at least one fastening element 117 for fastening said front waist region and back waist region together to encircle the waist and legs of a wearer. Fasteners 117 are tape fasteners and are therefore adapted to be openable and refastenable.

Tanji teaches that the absorbent core 110 is positioned between the top- and backsheets 105, 104 respectively and therefore does not teach that such assembly is attached to the exterior of the chassis 102. However, since the core 110 is responsible for absorbing exudates to prevent leakage to the user's undergarments, it would be obvious to one of ordinary skill in the art to alternatively attach the chassis to the exterior surface of the assembly for more efficient absorption and leakage prevention.

With respect to **Claim 17**: As stated with respect to claim 16, fastening elements 117 are adhesive tape tab fasteners.

With respect to **Claim 18**: Tape tab fastening elements 117 are cohesive in that the adhesive formed thereon is capable of sticking to itself but not able to significantly (i.e. permanently) stick to other materials, hence the openability and refastenability of said tape tabs.

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With respect to **Claim 19**: Tanji also teaches a fastening element 31 comprised of a mechanical fastener adapted to engage a nonwoven surface. Tanji does not teach a mechanical fastener for fasteners 117, however since Tanji teaches both mechanical fasteners and tape tabs as suitable means of securing said diaper cover 101 to a user or undergarment, it would be obvious to one of ordinary skill in the art to utilize mechanical fasteners for fastening elements 117 in lieu of adhesive tape tabs with a reasonable expectation of success.

#### ***Allowable Subject Matter***

Claims 1-15 and 20 are allowed.

#### ***Reasons for Indicating Allowable Subject Matter***

The following is a statement of reasons for the indication of allowable subject matter: A thorough search of the prior art of record did not disclose any reference, alone or in combination with other reference(s) that teaches or fairly suggests an absorbent article having a chassis and side flaps wherein lateral opposing portions of the chassis in the crotch region are folded laterally inward to overlap side flaps and are attached to the side flaps. The closest prior art of record is Sasaki (EP 0951890) and U.S. Patent No. 6,461,342 to Tanji et al. Sasaki taught the invention substantially as claimed except for the overlapping chassis in the crotch region of the diaper. Tanji also teaches the invention as claimed except for portions of the chassis that overlap the side flaps. The side flaps and the portion of the chassis to be folded are adhered to one another in the lateral side edges of said chassis and are coextensive and thus the chassis cannot be folded laterally inward to overlap respective side flaps.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**





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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
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March 29, 2007